

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Baiyang WANG

Appl. No.: 10/816,938

Filed: April 5, 2004

For: **Tissue Factor Antibodies and Uses
Thereof**

Confirmation No.: 3825

Art Unit: 1644

Examiner: Szperka, Michael Edward

Atty. Docket: 1861.1670002/JUK/WBC

Reply to Restriction Requirement and Election of Species

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the Office Action dated January 10, 2007, requesting an election of one invention to prosecute in the above-referenced patent application, Applicant hereby provisionally elects to prosecute the invention of Group III, represented by claims 29-34 and 78-80. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

Additionally, the Examiner has required an election of species. In reply, Applicant provisionally elects the species non-small cell lung cancer. Currently, claims 29-34 and 78-80 read on this species. This election is made without prejudice to or disclaimer of the other claims or inventions disclosed.

These elections are made **with** traverse.

The inventions of Groups **I, III, VII** and **VIII** are related as product, process of making, and process of using claims. 37 C.F.R. §1.141(b) recites that "where claims to all three categories, product, process of making, and process of use, are included in a national application, a three way requirement for restriction can only be made where the process of making is distinct from the product." The Examiner has failed to provide the distinctiveness of the product from the process of making. Moreover, the search of Groups **I, III, VII** and **VIII** would not present an undue burden to the U.S.P.T.O.

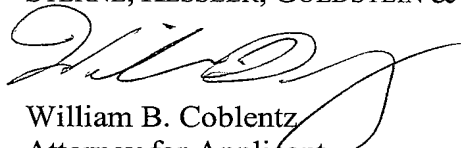
Applicant reserves the right to have additional species considered in the event that a generic claim is found to be allowable in accordance with 37 C.F.R. § 1.141(a).

In the Office Action at page 5, the Examiner states that the claims are directed to patentably distinct diseases to be treated with anti-TF antibodies. However, even where patentably distinct inventions appear in a single application, restriction remains improper unless the Examiner can show that the search and examination of the groups would entail a "serious burden." See MPEP § 803. In the present situation, the Examiner has failed to make such a showing. Reconsideration and withdrawal of the Election of Species Requirement, and consideration and allowance of all pending claims, are respectfully requested.

It is not believed that extensions of time are required, beyond those that may otherwise be provided for in accompanying documents. However, if additional extensions of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor are hereby authorized to be charged to our Deposit Account No. 19-0036.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



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